UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

RONALD F. PERRY, et al.,	***)***	
	)	
Plaintiffs	***)***	
	)	
v.	***)***	***Civil No. 96-203-P-C***
	)	
RYDER TRUCK RENTAL, INC., et al.,	***)***	
	)	
Defendants	***)***	

MEMORANDUM DECISION ON
DEFENDANT RYDER TRUCK RENTAL'S MOTION IN LIMINE

Before the court for decision at this time is a motion *in limine* (Docket No. 38) filed by defendant Ryder Truck Rental, Inc. ("Ryder") seeking to exclude evidence of a 1989 accident involving the same truck in which, two years later, plaintiff Ronald F. Perry suffered the injuries at issue in this litigation. For the reasons that follow, the motion is denied.

The accident that is the subject of this lawsuit occurred when a tractor-trailer rig, operated by Perry and owned by Ryder, rolled over on a turnpike entrance ramp in 1991. According to the motion papers, some two years earlier — on May 2, 1989 — the same tractor (but not the same trailer) was involved in another rollover accident. Ryder seeks a determination *in limine* that evidence of this previous accident should be excluded, either because it is irrelevant or because the probative value of the evidence is substantially outweighed by the factors listed in Fed. R. Evid. 403.

Concerning the former position, Ryder contends the evidence is irrelevant because the plaintiffs may not use the 1989 accident as evidence of negligence or causation unless they demonstrate that the two accidents occurred under similar circumstances. According to the plaintiff, the evidence is relevant not because of any similarity or lack thereof between the two accidents but

because it shows a history of problems with the tractor's so-called "fifth wheel," which they contend is a proximate cause of the 1991 accident.

The evidence at issue is relevant for such a purpose — assuming that a proper foundation is laid. At this point, the parties are in some dispute over whether all or just part of the tractor's fifth wheel was replaced subsequent to the 1989 accident but before the 1991 incident. Obviously, if the entire fifth wheel was replaced then evidence about the old one would not be probative of how the new one may have caused an accident. In the alternative, evidence of the 1989 accident would be relevant if the plaintiff could demonstrate that some other defect linked to the 1989 accident may have played a role in 1991. Ryder takes the position that it is too late to inject any such theories of liability into the case. If so, I am not able to make such a determination based on the motion papers.

Relevant evidence may nevertheless be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Fed. R. Evid. 403. In this instance, I am unable to agree with Ryder that the evidence at issue should be excluded on this basis either.

The potentially unfair prejudice and/or jury confusion that Ryder foresees concerns the possibility that the jury would use the 1989 accident as a means of determining what caused the 1991 incident and whether the defendants were negligent as a result. In support of this position, Ryder relies upon a series of products liability cases. These cases suggest that when a plaintiff alleges an injury from an allegedly defective or dangerous product, evidence of other accidents involving the same product generally lack probative value unless the prior incident or incidents are substantially similar to the incident at issue. *Cameron v. Otto Bock Orthopedic Indus., Inc.*, 43 F.3d 14, 16 (1st

Cir. 1994); *Espeaignnette v. Gene Tierney Co.*, 43 F.3d 1, 9-10 (1st Cir. 1994) (lack of prior accidents probative); *Freund v. Fleetwood Enters., Inc.*, 956 F.2d 354, 360 (1st Cir. 1992); *Vincent v. Louis Marx & Co.*, 874 F.2d 36, 43 (1st Cir. 1989); *McKinnon v. Skil Corp*., 638 F.2d 270, 277 (1st Cir. 1981). This is not a products liability case but rather a simple negligence action in which the plaintiffs allege that Ryder breached a duty of care by failing to repair a known defective condition in the truck at issue.[1] In such a case, there is nothing unfairly prejudicial or inherently confusing about evidence of an earlier accident involving the same truck; indeed, such evidence could well go to the heart of the case. *See, e.g., Marois v. Paper Converting Mach. Co.*, 539 A.2d 621, 625 (Me. 1988) (evidence of prior occurences admissible in negligence action to show existence of dangerous condition, notice thereof or causation).

For the foregoing reasons, the motion *in limine* of defendant Ryder Truck Rental, Inc. is **DENIED**.

Dated this 17th day of June, 1997.

David M. Cohen
United States Magistrate Judge

[1] The plaintiffs' claims against the other defendants relate to their allegedly having negligently loaded the trailer involved in the 1991 accident.